

## **REMARKS/ARGUMENTS**

Applicants assert that the status of this case as processed by the Patent and Trademark Office is in error. The Request for Continued Examination, along with the response submitted with the Request for Continued Examination, has not been considered by the Patent and Trademark Office. The current Office Action of record addresses the response dated January 24, 2008, and does not address the Request for Continued Examination and the response filed on July 28, 2008. PAIR includes the current record of these transactions. The current Office Action also indicates a final rejection. The finality of the rejection is in error in that the Request for Continued Examination and the Amendment filed with the Request for Continued Examination have not been considered by the current Office Action. Applicants attempted to resolve this issue via a telephonic interview with Examiner McLeod in early December. Applicants thought that an agreement was reached that a new Office Action would be sent. To date, applicants have not received a new Office Action. Accordingly, in order to clarify the record, applicants submit this response. The claims as indicated above are the claims as they were presented with the RCE filed on July 28, 2008. Applicants assert that the finality of the current rejection should be retracted and the claims as set forth herein (which are the claims as presented in the RCE) should be considered. Applicants have changed the identifiers of the claims from (currently amended) to (previously presented) in that applicants assume that PAIR is correct and that the RCE has been properly received.

### **I. Status of the Case**

Applicants filed an amendment on January 24, 2008. In response to the Amendment, applicants received a final Office Action dated April 29, 2008. In response to the final Office Action dated April 29, 2008, and in response to an interview, applicants elected to file an RCE with a substantive response on July 28, 2009. The changes made in the response filed with the RCE on July 28, 2009, have not been considered or addressed. The current Office Action dated December 2, 2008, indicates that the Office Action is in response to the amendment **filed January 24, 2008**. Furthermore, none of the changes submitted with the RCE were considered. The Office Action does not even appear to acknowledge that the RCE was filed. However, PAIR clearly indicates the receipt of the RCE and the response. The current Office Action also

indicates that the rejection is final. However, if the RCE and response submitted with the RCE had been considered, the Office Action could not be final in that the Office Action would be a first paper after the RCE where substantive changes to the claims were made. Applicants assert that the current Office Action is in error, that the finality of the current Office Action should be retracted, and that the response submitted with the RCE should be considered on its merits. Reconsideration is respectfully solicited.

## **II. Request for Reconsideration**

In view of the foregoing amendments and remarks, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact the undersigned attorney for the applicants at the telephone number provided below.

Respectfully submitted,

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